IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No.115-SB of 1994

Date of Decision: March 19, 2007

Prem Singh

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.K.S.Sidhu, Advocate,
for the appellant.

Mr.M.C.Berry, Senior DAG, Punjab,
for the State.

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RANJIT SINGH, J.

Prem Singh appellant alongwith Jarnail Singh, Roop Singh and Baljinder Singh alias Guddu, all residents of village Majauli, Police Station, Ghanaur were tried for an offence under Section 304 Part-I read with Section 34 IPC for having caused death of one Ram Sarup of the same village. Except for the appellant, remaining accused, named above, were found not guilty of the

charge preferred against them. Upon his conviction, the appellant, however, was sentenced to suffer rigorous imprisonment of 4-1/2 years and fine of Rs.1000/-. He was directed to undergo imprisonment for one month in case of default of payment of fine. He is in appeal before this court.

The facts, in brief, are that one Gurmel Singh of village Majauli hosted a lunch on 21.10.1987 to celebrate birth of his son. He had invited many persons from the village including the appellant and his co-accused and village Sarpanch Surjit Singh. Late Ram Sarup was also present at the function where drinks were served to the guests. Altercation took place between Ram Sarup and the accused persons. As per the allegations, Roop Singh and Baljinder Singh threw Ram Sarup on the ground after taking him into their arms and accosted others that he should not be spared as he was in the habit of contradicting them to show his supremacy. Prem Singh appellant and Jarnail Singh then had caught hold of one `Kharpar' (uneven log of wood used as a fire wood) each from the fire wood lying at the scene and allegedly gave two blows each to Ram Sarup while he was lying on the ground. Prem Singh appellant is alleged to have given two blows on the front side of the head of Ram Sarup, whereas Jarnail Singh had allegedly hit two blows on the back side of his head. This incident was witnessed by various persons present at the scene including Sarpanch Surjit Singh, Jagir Singh, Bakhtawar Singh, Gurmel Singh, Naib Singh and Lajja Ram. When they came forward to rescue Ram Sarup, the accused allegedly ran away from the scene with the Kharpars. Ram Sarup became unconscious and was rushed to Rajindera Hospital, Patiala by Surjit Singh, Gurmel

Singh, Lajja Ram etc. where he was admitted in the surgical ward. Dr.Charanjit Kaur Gill, Emergency Medical Officer sent information to S.H.O., Civil Lines, Patiala, who sent Q.S.T. To Police Station, Ghanaur in this regard. ASI Shiv Raj Parkash from Ghanaur Police Station accordingly came to Rajindera Hospital at about 9.00 P.M. On an application, Exh.PH, made by him, doctor endorsed his opinion thereon that Ram Sarup was unfit to make statement. Surjit Singh Sarpanch met the ASI at the hospital and recorded his statement, Exh.PE. The ASI made an endorsement, Exh.PE/1, on the statement to the effect that prima facie offence under Sections 324/34 IPC only was made out from the facts and that report to that effect will be made in the Roznamcha on return to the police station. Exh.PJ is the entry No.26 dated 21.10.1987 made in the Roznamcha by ASI at about 10.00 P.M. on return to the police station. Copy of the Roznamcha was kept by ASI, who made an endorsement, Exh.PH/1 on it on the next day at about 9.25 A.M. And endorsement and copy of the Roznamcha was then sent to the police station, on the basis of which formal FIR, Exh.PJ/2, was recorded in the police station at No.63 dated 22.10.1987 under Sections 308/323/34 IPC. Thereafter on learning about the death of Ram Sarup in the hospital, offence under Section 304 IPC was added. The post-mortem of the body was conducted by Dr.Prem Chand Aggarwal. Investigating Officer visited the place of occurrence and got prepared a rough site plan. He also lifted the blood stained earth in the presence of Surjit Singh Sarpanch. Other articles, like clothes of the deceased and post-mortem report were also taken in possession by the ASI at Rajindera Hospital. Jarnail Singh and Roop

Singh accused were arrested on 26.10.1987, whereas Baljinder Singh and Prem Singh appellant were arrested on 28.10.1987. Upon completion of investigation, challan under Sections 304/34 IPC was preferred against all the accused leading to conviction of the appellant and acquittal of the remaining accused as already noted.

Prosecution examined as many as nine witnesses in support of its case. The accused and the appellant, pleaded their false implication on account of enmity and ill-will with Sarpanch Surjit Singh, when the evidence and circumstances were put to them. They also examined six witnesses in support of their case, including handwriting expert to prove that entry made in the Roznamcha register contained some addition or alteration with different ink. In this regard, Dewan K.S.Puri (DW-5) brought out before the court that number written was 26 and the same was changed to 09, so also the date originally written being 21.10.1987, which was changed to 22.10.1987. The witness also deposed that the time originally written was 10 PM which was changed to 10 AM. DW-5 then pointed out that in the body of the FIR, DDR number as mentioned was still 26 dated 21.10.1987. He also deposed that the entries No.23 and 36 began with word `Attay' and last line were subsequent to addition in entry No.23. As per DW-5 there was difference in the ink shade of signatures of Jarnail Singh, Roop Singh and Jagdev Singh etc. when compared with shade of body writings on Exhs.DB and DC. Bakhtawar Singh (DW-1) testified that Ram Sarup deceased, Jagir Singh and Gurmel Singh were helpers to Surjit Singh Sarpanch, whereas accused persons were helpers of his rival Ajaib Singh and that is why Surjit Singh Sarpanch had played an active role in lodging

the complaint and prosecuting the appellant and others because of ill-will and vengeance.

Mr.K.S.Sidhu, learned counsel appearing for the appellant points out serious holes in the prosecution story and would say that Surjit Singh, though claimed himself to be an eye-witness, was in fact not even present at the time of alleged occurrence. As per the counsel, there is a serious and direct conflict between the ocular version and the medical evidence. He would also highlight the un-explained delay of 18 hours in lodging the FIR and further delay in sending this report to Magistrate, which, as per record, was received at 8.00 A.M. on 23.10.1987. From all this, it is contended that the FIR was anti-dated and anti-timed and recorded after due deliberations, wherein efforts were made to co-relate the same with the nature of injuries received by deceased Ram Sarup. The counsel would also highlight the aspect of enmity and ill-will between the appellant and his co-accused with Surjit Singh Sarpanch, the main prosecution witness, who has given eye-witness account. The learned counsel submits that except for this account given by witnesses, who are inimical and interested, no independent witness has come forward to support the case of prosecution, though admittedly number of them were allegedly present at the scene of the incident. He would, with much justification, say that even Gurmel Singh at whose house this incident allegedly took place, has also not given evidence to make either any allegation or to support the case of prosecution. The counsel has further justifiably highlighted the fact that even the trial court had disbelieved the main prosecution story while acquitting Jarnail Singh, Roop Singh and Baljinder Singh and would accordingly

say that it is unsafe to maintain the conviction of the appellant on the basis of same very evidence which is disbelieved by the court.

Mr.M.C.Berry, Senior Deputy Advocate General, Punjab, on the other hand, would plead that the prosecution has succeeded in proving the offence against the appellant and hence no case for interference in the conviction and sentence awarded to him is made out.

I have considered the rival submissions made before me. It is seen that case of prosecution is supported by the evidence of two witnesses, who have given the eye-witness account of the incident and they are Surjit Singh (PW-3) and Jagir Singh (PW-4). In fact PW-3 is the star prosecution witness, who claims himself to be present at the scene and had witnessed the entire incident. Having stated that accused Jarnail Singh, Prem Singh, Roop Singh and Baljinder Singh exchanged hot words with Ram Sarup while they were conversing with each other, PW-3 deposed that Roop Singh and Baljinder Singh remarked that deceased Ram Sarup used to insult them in public and that he be not spared. He further testified that Baljinder Singh and Roop Singh got Ram Sarup down on the ground when appellant Prem Singh picked up a Kharpar and gave two blows on the right side of the head of Ram Sarup. PW-3 further testified that Jarnail Singh thereafter picked up Kharpar and gave two blows on the back side of the head of Ram Sarup. Thus, as per the witness, appellant Prem Singh and his co-accused Jarnail Singh had given two blows each with Kharpar on the head of late Ram Sarup. The evidence of PW-3 is supported by Jagir Singh (PW-4), who deposed that Prem Siongh gave two Kharpar blows on the left side

of forehead of Ram Sarup and Jarnail Singh gave two Kharpar blows on the back side of the head of the deceased. Thus as per their evidence, four blows with Kharpar were given on the head of the deceased, two by appellant Prem Singh and two by his co-accused Jarnail Singh. This eye-witness account is seriously contradicted by the medical evidence on record. Dr.Prem Chand Aggarwal (PW-1), who conducted the post-mortem examination of the deceased found only one injury on the head of the deceased. While under cross-examination, this witness clearly agreed with the suggestion that "it is possible that this injury was caused with the single blow." The witness further testified that he had not noticed any other injury or swelling on the body of the deceased except the injury described by him. The doubt in this regard, if any, can be set at rest by making reference to the evidence of Dr.Mohinder Singh (PW-7). This witness, when re-called for cross-examination, deposed that he had examined the patient himself and that "there was only one injury on the head of the deceased." PW-7 also testified that he had not given any opinion to the police regarding the unfitness of the deceased to make a statement on account of his being unconscious. As per PW-7, there was no specific note on the bed head ticket that the patient had remained unconscious till his death. Thus, it is clear that there was only one injury on the head of the deceased. The trial court taking note of this important inconsistency between the eye-witness account and the medical evidence, acquitted Jarnail Singh by holding that infliction of the injury on the back side of the head of Ram Sarup appears to be doubtful because of lack of medical evidence on that score and further observed that the benefit of doubt was bound to go

to the accused on this score. Not only that, the trial court also viewed that the prosecution in fact could prove at least one injury with Kharpar given by Prem Singh on the right side of the head while he was lying down, whereas the other injury said to be given by Jarnail Singh on the person cannot be said to be proved beyond shadow of reasonable doubt. The trial court also could not believe eye-witness account to bring home the liability against the remaining two accused Roop Singh and Baljinder Singh and they were also acquitted. This aspect, when coupled with the delay in lodging the FIR and receipt thereof by the Magistrate with inordinate delay, would certainly go to cast doubt on the version given by the eye-witnesses. This aspect would further acquire significance when viewed in the light of the fact that defence raised a strong plea of inimical relations between the accused and Surjit Singh Sarpanch because of panchayat elections. The Investigating Officer apparently has not conducted himself with requisite independence. He has admittedly recorded the statement of Surjit Singh eye-witness while at hospital, but still did not convert it into FIR. The defence was able to point out alteration/interpolation in the entries made in the Roznamcha register. Even the DDR number written in the FIR was also found to have been over written and changed not only in its number, but the date as well. The timing was also found to be changed from PM to AM. In this regard, evidence of DW-5 can be referred. He testified that he examined the carbon copy of FIR, Exh.PJ/2, and the entries No.23 dated 21.10.1987 and 36 dated 22.10.1987 in the Roznamcha register of Police Station, Ghanaur. He testified that original number in Exh.PJ/2 (carbon copy of FIR No.63) was “26”, which was changed subsequently to “09”. As

per the witness, the date written originally was 21.10.1987 and time 10 PM, which was found to have been changed to 22.10.1987 and 10 AM. In the body of the FIR, still No.26 dated 21.10.1987 at 10 PM was found mentioned, which had not been changed to show the manipulation and interpolation in the entries. He also gave evidence of writing and signatures etc. on Exhs.DB and DC being in different writing and ink. No meaningful cross-examination of this witness was done except for a bald suggestion that he has given a wrong opinion at the instance of the accused. Rather cutting etc. appears to have not been disputed by the prosecution. This when seen in the light of the fact that report by the Magistrate was received after much delay at 8 AM on 23.10.1987, these interpolations and over writings cannot be easily ignored. In fact the version given by the eye-witnesses appears to have been improved than the one given in the FIR. In the FIR, which was recorded at the instance of PW-3, he has clearly stated that appellant Prem Singh gave two blows with Kharpar on the head of Ram Sarup on the front side, whereas Jarnail Singh gave two blows on the head of deceased Ram Sarup on the back side with Kharpar. Before the court, he has now improved his version to say that the blow given by appellant Prem Singh is on the right side of the head of Ram Sarup. This subtle change before the court appears to have been made with an attempt to bring it in tune with the medical evidence. Similar attempt appears to have been made through PW-4, who also attempted to support PW-3 by saying that the blow was on the left side of the forehead. They still appear to have not succeeded in doing that. This appears to be a deliberate attempt on their part on the vital issue to bring it in tune with the medical evidence, which

would rather throw doubt on the case of prosecution. This infirmity perhaps could have been over looked but for the fact that this evidence still is in total contradiction to the medical evidence. Both the eye-witnesses maintained before the court that four blows were given on the head of the deceased two each by the appellant and co-accused Jarnail Singh, whereas medical evidence categorically shows that there was only one injury on the head. This, when seen in the light of the evidence that the FIR was lodged and various interpolations and over writings done would certainly go to cast doubt on the prosecution version. It cannot be easily ignored that same eye-witnesses have been disbelieved by the trial court while acquitting Jarnail Singh co-accused of the appellant. No doubt, the principle of falsus in uno falsus in omnibus is not to be invoked in our courts and it is the function of the court to disengage the truth from falsehood but where truth and falsehood are inextricably mixed up polluting the entire fabric of narration, the court can be justified in rejecting the evidence. It has been held that story given by the eye-witnesses has to be carefully scrutinized and the court has to appraise the evidence to see to what extent it is worthy of acceptance and merely because in one respect the court considers it unsafe to rely on the testimony of a witness it does not necessarily follow as a matter of law that it must be discarded in all other respects as well. Duty of the court is also to see that the witnesses, who speak before it are credible and have no interest in implicating the accused or have any ulterior motive. The court has to sift the evidence with care in each case and on full consideration of all the relevant material circumstances to come to a decision as to which

part of the testimony of the witness to accept and which to reject. Though the trial court has accepted the part of the version given by the eye-witnesses, yet, it appears unsafe to place implicit reliance on the testimony of the eye-witnesses in this case, when seen in the background that serious allegations of enmity and false implication are made. The witnesses were very specific that four blows on the head of the deceased were given, which had not been accepted on the basis of evidence on record. Concededly number of persons had witnessed this incident and none had come forward to depose about it. The police even did not make any effort to associate the person at whose house this incident took place. The eye-witnesses cannot be considered to be independent and as such there is need to scrutinise their version with care and caution. Seen in that light, it may not be safe to rely upon their version in the background that they have introduced certain changes in the background of an attempt by the prosecution to interpolate and manipulate the record. The evidence also stands in total contrast to the medical evidence on record.

Taking the totality of the facts and circumstances in view, I am inclined to hold that prosecution had not succeeded in proving its case beyond reasonable doubt, benefit of which must accrue to the appellant. The present appeal is, thus, allowed. The conviction and sentence awarded to the appellant is set-aside. The bail bonds and surety bonds, if any, furnished in the trial court, shall stand discharged.

March 19, 2007 (RANJIT SINGH)
ramesh JUDGE